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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 AMELIA CONCEPCION
11 HERNANDEZ,

Plaintiff,

12 v.

13 CAROLYN W. COLVIN, Acting
14 Commissioner of Social Security,

Defendant.

CASE NO. 15cv2270-WQH-WVG
ORDER

15 HAYES, Judge:

16 The matter before the Court is the review of the Report and Recommendation
17 (ECF No. 20) issued by United States Magistrate Judge William V. Gallo,
18 recommending that Plaintiff's Motion for Summary Judgment (ECF No. 12) be denied
19 in part and granted in part and that Defendant's Cross-Motion for Summary Judgment
20 (ECF No. 17) be granted in part and denied in part and that the case be remanded for
21 further proceedings.

22 **I. Background**

23 On February 14, 2012, Plaintiff filed an application for disability insurance
24 benefits, alleging disability beginning January 5, 2011. (AR 55-57). Plaintiff's
25 application was denied at the initial level and upon reconsideration. Plaintiff then
26 requested a hearing before an Administrative Law Judge (ALJ), which was held on
27 January 13, 2014. (AR 21). On January 31, 2014, the ALJ issued a written decision
28 finding Plaintiff not disabled under sections 216(9) and 223(d) of the Social Security

1 Act. (AR 30). The Appeals Council for the Social Security Administration denied
2 Plaintiff's request for further review. (AR 1).

3 On October 9, 2015, Plaintiff, represented by counsel, commenced this action
4 seeking judicial review of Defendant's decision pursuant to 42 U.S.C. § 405(g). (ECF
5 No. 1). On March 21, 2016, Plaintiff filed a motion for summary judgment. (ECF No.
6 12). On April 19, 2016, Defendant filed a cross-motion for summary judgment. (ECF
7 No. 17). On April 19, 2016, Defendant filed an opposition to the motion for summary
8 judgment. (ECF No. 18). On May 19, 2016, Plaintiff filed an opposition to the cross-
9 motion for summary judgment. (ECF No. 19).

10 On August 3, 2016, the Magistrate Judge issued the Report and
11 Recommendation. (ECF No. 20). The Magistrate Judge found that "the ALJ did not
12 commit legal error in evaluating both treating physicians' opinions that Plaintiff could
13 return to work." *Id.* at 43. The Report and Recommendation recommends that
14 "Plaintiff's MSJ regarding the treating physician issue is DENIED and Defendant's
15 Cross Motion regarding the treating physician issue is GRANTED." *Id.* The
16 Magistrate Judge found that "1) the ALJ committed legal error by not considering
17 Plaintiff's potential closed period of disability between January 2011 to August 2012,
18 and possibly until November 2013, and 2) alternatively, that even if the ALJ did not
19 commit legal error, the ALJ's finding that Plaintiff was not disabled during the potential
20 closed period is unsupported by substantial evidence." *Id.* at 47. The Report and
21 Recommendation recommends that "the Plaintiff's MSJ regarding the closed period
22 should be GRANTED, that the Defendant's Cross-motion regarding the closed period
23 should be DENIED, and that the case be remanded to consider Plaintiff's potential
24 closed period." *Id.* at 53.

25 The Report and Recommendation states that "no later than August 17, 2016, any
26 party to this action may file written objections with the Court" and "[t]he [parties are
27 advised that failure to file objections within the specific time may waive the right to
28 raise those objections on appeal." *Id.* at 54. The docket reflects that no objections to

1 the Report and Recommendation have been filed.

2 **II. Review of the Report and Recommendation**

3 The duties of the district court in connection with a report and recommendation
4 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
5 U.S.C. § 636(b). The district judge must “make a de novo determination of those
6 portions of the report . . . to which objection is made,” and “may accept, reject, or
7 modify, in whole or in part, the findings or recommendations made by the magistrate.”
8 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
9 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
10 F.3d 992, 1000 n. 13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th
11 Cir. 2003) (en banc).

12 The Court has reviewed the Report and Recommendation, the written opinion of
13 the ALJ, the administrative record, and the submissions of the parties. The Court
14 concludes that the Magistrate Judge correctly found that the ALJ’s decision regarding
15 the treating physician issue is supported by substantial evidence and the ALJ applied
16 the correct legal standards. The Court further concludes that the Magistrate Judge
17 correctly found that the ALJ committed legal error by not considering Plaintiff’s
18 potential closed period of disability or, in the alternative, the ALJ’s finding that Plaintiff
19 was not disabled during the potential closed period is not supported by substantial
20 evidence.

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1 **III. Conclusion**

2 IT IS HEREBY ORDERED that (1) the Report and Recommendation (ECF No.
3 20) is adopted in its entirety; (2) the motion for summary judgment (ECF No. 12) filed
4 by Plaintiff is denied in part and granted in part; (3) the cross-motion for summary
5 judgment (ECF No. 17) filed by Defendant is granted in part and denied in part; and (4)
6 the case is remanded to the Social Security Administration for further proceedings
7 consistent with this Order and the Report and Recommendation.

8 DATED: August 25, 2016

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10 **WILLIAM Q. HAYES**
11 United States District Judge
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